

3. CRA has asserted claims in various Commission proceedings, including A-93-08-035, that its members be allowed access to the MTSO switch of facilities-based cellular service providers, including McCaw, for the purpose of providing enhanced services to such cellular reseller's retail end-users, which claims McCaw and certain others have opposed. Without prejudice to the Parties' respective positions regarding such access and, because the parties dispute whether such access is required by existing Commission decisions, in lieu thereof, AT&T/McCaw agree that: commencing within thirty (30) days following the effective date of final Commission approval of the Transaction on terms not materially less favorable to AT&T/McCaw than are presently set forth in the DRA Settlement Agreement, and terminating in each affected cellular service area either (a) at such time as cellular resellers may be allowed access to the MTSO switch for the purpose of providing enhanced services, or (b) upon the later of (i) completion of implementation in such cellular service area of Equal Access in accordance with the DRA Settlement Agreement, or (ii) March 31, 1996, McCaw will provide to each cellular reseller taking service from a McCaw Cellular Utility a continuing margin of at least twenty-two percent (22%) on any existing (e.g., voice mail) or other such enhanced service which such utility now or in

the future makes available to its own retail customers at separate charge as an optional feature offered solely in connection with its basic cellular service. If, during the term hereof, a McCaw Cellular Utility offers any such enhanced service to its retail end-users without a charge separate from its basic cellular service, the Utility will make such service likewise available to its cellular resellers without separate charge. If and to the extent the Commission orders the tariffing of any enhanced service subject to this paragraph, McCaw's Cellular Utilities' tariffs will reflect the margin arrangement contained in this paragraph, including the terms upon which the arrangement will terminate as set forth above.

4. Within thirty (30) days of the effective date of final Commission approval of the Transaction on terms not materially less favorable than are presently set forth in the DRA Settlement Agreement, the current roaming arrangement granted to cellular resellers by McCaw Cellular Utilities on Northern California A-block systems in Monterey/Salinas, Vallejo/Fairfield, Sonoma, Napa, Sacramento/Stockton, etc., as reflected in their respective tariffs, will be extended to cellular resellers by each other McCaw Cellular Utility. The tariffs of the affected McCaw Cellular Utilities will be modified to reflect such roaming arrangement. Except as provided below, such

arrangement shall remain in effect until March 31, 1996, and thereafter may be changed, if at all, only by advice letter filed in accordance with such Commission procedures as are applicable at the time. CRA reserves the right to protest any such advice letter. In the event that McCaw or AT&T/McCaw enters into any wholesale roaming arrangement on behalf of a McCaw Cellular Utility with any other California cellular carrier, the terms of such arrangement will supersede the roaming arrangement otherwise provided by the McCaw Cellular Utilities hereunder, so long as cellular resellers are accorded the same charges, terms and conditions of that arrangement as are provided McCaw and McCaw/AT&T and so long as the charges, terms and conditions are no less materially favorable than those provided hereunder. In addition to the foregoing, and consistent with the policy reflected herein, McCaw/AT&T agree to support any proposal by their partners in other California cellular utilities in which they have less than a majority controlling interest, or an equal interest, to extend a roaming arrangement on similar terms to cellular resellers in the markets in which such other cellular utilities operate. Immediately upon execution of this Agreement, and without prejudice to its legal position advanced therein, CRA will withdraw its protest to Application No. 93-01-034.

5. Within thirty (30) days of execution of this Agreement, McCaw Cellular Utilities will adopt the BACTC Schedule 4-T 5th Rev. tariff sheet 13 for general fraud and roamer fraud treatment of cellular resellers, and require no more documentation of such fraud for cellular call credits for resellers than they require of their own retail customers. In addition, McCaw, through the partnership interests of its subsidiaries and affiliates, will encourage LACTC to adopt this policy and the BACTC fraud tariff language policy. As new technologies and procedures are developed to minimize fraudulent cellular charges, cellular resellers who buy from McCaw Cellular Utilities and from BACTC and LACTC agree to cooperate with McCaw and McCaw/AT&T and BACTC and LACTC to implement future revisions to this policy and tariff language so long as they inure to the benefit of all Parties on a non-discriminatory basis, as each may determine in its own discretion.

6. AT&T/McCaw acknowledge, for each McCaw Cellular Utility, that it is, and would continue to be for a minimum of two years after execution of this Agreement, their policy, as set forth in their respective tariffs, that resellers do not pay wholesale termination charges on long-term wholesale contract plans when a reseller's retail customer changes, so long as the reseller adheres to the terms of the long-term wholesale contract plan as reflected

in their respective tariffs. Any change in the foregoing would be sought, if at all, by advice letter filed in accordance with such Commission procedures as are applicable at the time. CRA reserves the right to protest any such advice letter. With regard to the information provided AT&T/McCaw concerning the identity of any customer change for any wholesale plan, resellers would only be required to provide the following specific information concerning a customer who wishes to change their mobile number or ESN: (1) the activation date; (2) the wholesale service plan; (3) the proposed change date; (4) the old and new mobile number; and (5) the old and new ESN. For purposes of compliance with such long-term wholesale plans, a reseller would not be required under any circumstances to provide the carrier any customer network proprietary information such as, but not limited to, the reseller's end-user customer's name, address (both billing and residential) and telephone number, business or home.

7. For purposes of this Agreement:

Commission refers to the California Public Utilities Commission.

Final Commission Approval shall be deemed to be a decision by the Commission that has become effective and is either (i) not subject to an application for rehearing or (ii) in which rehearing is pending or has been granted, but in which no stay of the effectiveness of the decision has been entered by the Commission within thirty (30) days of application therefor.

Agreement refers to this document.

Merger refers to the transaction whereby McCaw will become a wholly owned subsidiary of AT&T.

Transaction refers to the transfer of indirect control of McCaw's interests in those entities subject to Application No. 93-08-035.

McCaw's California Utilities refers to those Commission-certified cellular utilities subject to Application No. 93-08-035 over which McCaw has and retains the ability to exercise majority voting control, or which AT&T or McCaw in the future acquires and has the ability to exercise majority voting control. Notwithstanding anything to the contrary herein, the obligations of AT&T/McCaw will extend to future-acquired utilities only in the event AT&T/McCaw acquires control of such utilities in the absence of any protest by CRA or its members.

Parties refers to the signatories to this Agreement.

8. Nothing in this Agreement extends jurisdiction of any regulatory agency over any issue, matter or utility for which that agency does not have jurisdiction. Neither this Agreement nor the Transaction itself will change, limit or extend any existing authority or jurisdiction of the Commission over any of the entities subject to this Agreement.

9. The successful implementation of this Agreement satisfies the Parties' concerns regarding the Transaction. In the event the Transaction is not approved by the Commission, or is approved on conditions materially less favorable to AT&T/McCaw than is currently set forth in

the DRA Settlement Agreement, all obligations under this Agreement shall cease, and the positions of each Party restored to the status quo ante regarding those obligations.

10. The positions taken herein, and the actions taken in furtherance of this Agreement, are in settlement of disputed claims. Nothing in this Agreement shall be deemed as an admission of any allegation raised in any of the pleadings submitted in connection with the Application Proceeding. The Parties agree that the actions required to be taken by them pursuant to this Agreement are without prejudice to positions each Party has taken, or may hereafter take, in any other proceeding. This Agreement is not intended by the Parties to be binding precedent in any other proceeding or litigation not involving the matters explicitly covered by this Agreement. None of the terms of the Agreement shall apply for any purpose other than implementation of this Agreement.

11. Implementation of this Agreement is subject to final approval by the Commission of the DRA Settlement Agreement and the Transaction on terms not materially less favorable than those presently set forth in the DRA Settlement Agreement. The Parties agree jointly to support the provisions of the DRA Settlement Agreement and jointly to urge its adoption by the Commission in its entirety. The Parties agree to cooperate and use their best efforts to

encourage the Commission to approve the Application expeditiously, without a hearing, on terms stated therein. In the event the Transaction is not approved on terms materially no less favorable to AT&T/McCaw than are presently set forth in the DRA Settlement Agreement, this Agreement shall be null and void and the rights and obligations of the Parties restored to the status quo ante.

12. The parties agree to participate, if necessary or appropriate, in joint ex parte contacts in accordance with applicable Commission rules and procedures to encourage the Commission to approve the DRA Settlement Agreement and the Transaction and to accept the terms of this Agreement without further proceedings. The parties further agree to actively defend the DRA Settlement Agreement and this Agreement if opposed by others and to consult with each other regarding the development of a defense to any issues that may be raised by others in opposition to the DRA Settlement Agreement or to this Agreement.

13. The Parties each agree, without further consideration, to execute and/or cause to be executed any other documents, and to take any other action as may be necessary, to effectively consummate the subject matter of this Agreement.

14. Pending final approval of the DRA Settlement Agreement by the Commission, no Party shall engage in any ex

parte contact with the Commission in regard to this Agreement except in the presence of the other Parties. No Party shall seek, directly or indirectly, to have the Commission modify the terms of this Agreement without the express written consent of all other parties.

15. This Agreement contains the entire agreement between the Parties to this Agreement, and all previous understandings, agreements, and communications prior to the date hereof, whether express or implied, oral or written, relating to the subject matter of this Agreement are fully and completely extinguished and superseded by this Agreement. This Agreement shall not be altered, amended, modified, or otherwise changed except by a writing duly signed by all the Parties hereto.

16. This Agreement shall not establish, be interpreted as establishing, or be used by any Party to establish or to represent their relationship as any form of agency, partnership or joint venture. No Party shall have any authority to bind the other or to act as an agent for the other unless written authority, separate from this Agreement, is provided.

17. This Agreement and all covenants set forth herein shall be binding upon and shall inure to the benefit of the respective Parties hereto, their legal successors, heirs, assigns, partners, representatives, executors,

administrators, parent companies, subsidiary companies, affiliates, divisions, units, agents, attorneys, officers, directors and shareholders.

18. This Agreement and the provisions contained herein shall not be construed or interpreted for or against any Party hereto because that Party drafted or caused its legal representative to draft any of its provisions.

19. Nothing in this Agreement shall be construed to obligate any Party to take any action in violation of any statute, regulation, rule, order or other provision of law or of any fiduciary or other duty to any person or entity.

20. Time is of the essence for this Agreement.

21. Except as expressly stated herein, the obligations set forth herein apply solely to California intrastate services presently within the jurisdiction of the Commission. Notwithstanding anything to the contrary herein, a Party's obligation hereunder shall terminate at such time as such obligation is determined by the Parties, acting in good faith: to be (i) outside the jurisdiction of the Commission, or (ii) subject to preemption by statute, Final Order by the Federal Communications Commission or successor agency ("FCC") or court of competent jurisdiction. If the Parties disagree as to whether such lack of jurisdiction or preemption applies, the issue may be submitted for declaratory ruling to the FCC or court issuing

such Final Order, or to arbitration by either Party in accordance with AAA procedures, for resolution, in any event, within ninety (90) days of such submission; pending such resolution, the obligation subject to dispute shall continue in accordance with this Agreement. AT&T/McCaw will not invoke any rights under this paragraph prior to March 31, 1996.

22. Notwithstanding anything to the contrary herein, in the event the AT&T/McCaw Transaction fails, for any reason, to be consummated, and in the further event that McCaw transfers majority voting control of any McCaw Cellular Utility otherwise subject to this Agreement to a third party, the obligations of such McCaw Cellular Utility hereunder shall cease as of the date such change of control becomes effective. CRA reserves its right to protest the application for any such change of control. If the AT&T/McCaw transaction does close, and AT&T/McCaw thereafter transfers control of a McCaw Cellular Utility to a third party, such Utility will remain subject to such obligations as it would otherwise have under the Agreement only if such transfer of control is consummated without protest by CRA or its members.

23. This Agreement may be executed in any number of counterparts and by different Parties hereto in separate counterparts, with the same effect as if all Parties had

signed one and the same document. All such counterparts shall be deemed to be an original and shall together constitute one and the same Agreement.

24. The Parties hereto acknowledge that each has read this Agreement, that each fully understands its rights, privileges and duties under this Agreement, and that each enters this Agreement freely and voluntarily. Each party further acknowledges that it has had the opportunity to consult with an attorney of its own choosing to explain the terms of this Agreement and the consequences of signing it.

25. The Parties each represent that they and/or their counsel have made such investigation of the facts and law pertaining to the matters described in this Agreement as they deem necessary and that they have not relied and do not rely upon any statement, promise or representation by any other party or its counsel, whether oral or written, except as specifically set forth in this Agreement. The Parties each expressly assume the risk of any mistake of law or fact made by them or their counsel.

26. The undersigned hereby acknowledge and covenant that they have been duly authorized to execute this Agreement on behalf of their respective principals and that such execution is made within the course and scope of their respective agency and/or employment.

DEC-28-1993 12:12 FROM P.A.C.

TO

Comtech S.Muir

P.18/20

27. CRA warrants that it has the authority to enter into this Agreement on behalf of each of its members and ABS Telephone Company. CRA agrees to furnish a copy of this Agreement to each of its present members and to require each new member during the term of this Agreement to agree in writing to be bound by its terms.

28. This Agreement shall be governed by the laws of the State of California.

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement on the pages that follow.

AMERICAN TELEPHONE &
TELEGRAPH COMPANY

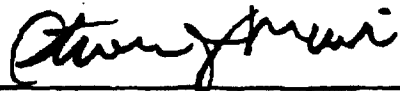
MCCAW CELLULAR
COMMUNICATIONS, INC.

By: James E. Barden

By: Scott K. Morris

CELLULAR RESELLERS ASSOCIATION,
INC.

ABS TELEPHONE COMPANY

By: 

By: _____

On Behalf of Itself and the
following Cellular Resellers:

Approved as to form:

LAW OFFICES OF PETER A. CASCIATO

By: 

Peter Casciato

Attorney for Cellular
Resellers Association
and ABS Telephone Company

MCCUTCHEN, DOYLE, BROWN & ENERSEN

By: _____

Gregory P. Landis

Attorneys for American
Telephone and Telegraph Company
and Ridge Merger Corporation

MORRISON & FOERSTER

By: _____

Marc P. Fairman

Attorneys for McCaw
Cellular Communications, Inc.

DEC-20-93 MON 14:06 COMTECH

PUBLIC ADVOCATES, INC.

CELLULAR RESELLERS ASSOC
and ABS TELEPHONE COMPANBy: MaDeweyBy: Steven J. [Signature]

Representing the Latino Issues
Forum, Chinese for Affirmative
Action, San Francisco Black
Chamber of Commerce, Mexican-
American Political Association
and American G.I. Forum

CELLULAR AGENTS ASSOCIATION

By: _____

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TELEGRAPH COMPANY

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COMMUNICATIONS, INC.

By: _____
James E. Barden

By: _____
Scott K. Morris

CELLULAR RESELLERS ASSOCIATION,
INC.

ABS TELEPHONE COMPANY

By: _____

By:  _____

On Behalf of Itself and the
following Cellular Resellers:

PUBLIC ADVOCATES, INC.

CELLULAR RESELLERS ASSOCIATION, I.
and ABS TELEPHONE COMPANY

By: McDewey

Representing the Latino Issues
Forum, Chinese for Affirmative
Action, San Francisco Black
Chamber of Commerce, Mexican-
American Political Association
and American G.I. Forum

By: Alfred C. O.

ABS TELEPHONE COMPANY

CELLULAR AGENTS ASSOCIATION

By: _____

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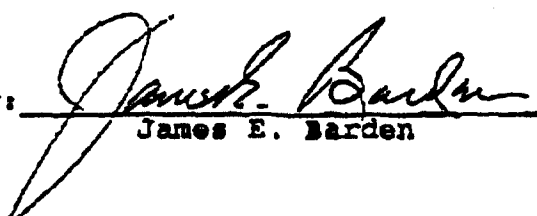
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AMERICAN TELEPHONE &
TELEGRAPH COMPANY

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COMMUNICATIONS, INC.

By: _____


James E. Barden

By: _____

Scott K. Morris

CELLULAR RESELLERS ASSOCIATION,
INC.

ABS TELEPHONE COMPANY

By: _____

By: _____

On Behalf of Itself and the
following Cellular Resellers:

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AMERICAN TELEPHONE &
TELEGRAPH COMPANY

MCCAW CELLULAR
COMMUNICATIONS, INC.

By: _____
James E. Barden

By:  _____
Scott K. Morris

CELLULAR RESELLERS ASSOCIATION,
INC.

ABS TELEPHONE COMPANY

By: _____

By: _____

On Behalf of Itself and the
following Cellular Resellers:

Approved as to form:

LAW OFFICES OF PETER A. CASCIATO

By: Peter Casciato

Attorney for Cellular
Resellers Association
and ABS Telephone Company

MCCUTCHEN, DOYLE, BROWN & ENERSEN

By: Gregory P. Landis
Gregory P. Landis

Attorneys for American
Telephone and Telegraph Company
and Ridge Merger Corporation

MORRISON & FOERSTER

By: Marc P. Fairman

Attorneys for McCaw
Cellular Communications, Inc.

Approved as to form:

LAW OFFICES OF PETER A. CASCIATO

By: Peter Casciato

Attorney for Cellular
Resellers Association
and ABS Telephone Company

MCCUTCHEN, DOYLE, BROWN & ENERSEN

By: Gregory P. Landis

Attorneys for American
Telephone and Telegraph Company
and Ridge Merger Corporation

MORRISON & FOERSTER

By: Marc P. Fairman
Marc P. Fairman

Attorneys for McCaw
Cellular Communications, Inc.

CERTIFICATE OF SERVICE

I declare that:

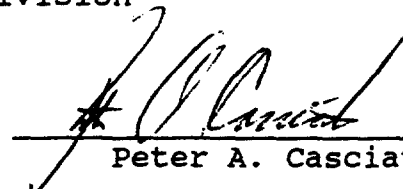
I am employed in the City and County of San Francisco, California. I am over the age of eighteen years and am not a party to the within entitled cause; my business address is 1500 Sansome Street, Suite 201, San Francisco, CA 94111.

On January 10, 1994, I served the attached Withdrawal of Protest, enclosed in sealed envelopes with postage thereon fully prepaid, to be placed in the United States Post Office mail box at San Francisco, California as follows:

Hon. Kirk McKenzie
Administrative Law Judge
Public Utilities Commission
505 Van Ness Avenue
San Francisco CA 94102

John M. Kauffman, Esq.
Morrison & Foerster
345 California Street
San Francisco, CA 94104

Douglas J. Dade
Public Utilities Commission
Commission Advisory & Compliance Division
505 Van Ness Avenue Room 3-D
San Francisco CA 94102


Peter A. Casciato

ATTACHMENT 10

CPUC Decision, 93-04-058

Mailed

APR 23 1993

Decision 93-04-058 April 21, 1993

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's)
own motion into the regulation of) 1.88-11-040
cellular radiotelephone utilities.) (Filed November 23, 1988)

And Related Matter.) Application 87-02-017
) (Filed February 6, 1987)

INTERIM OPINION

(For appearances see Decision 92-10-026.)

Background

On March 25, 1993 President Fessler issued the following statement in a Commissioner Ruling:

Cellular subscribers in California suffer the dubious distinction of paying among the highest rates in the nation. This situation is intolerable and must be changed. Over time our predecessors have suggested that a lack of competition born of the federally mandated duopoly nature of the industry has caused wholesale cellular rates to defy the forces of meaningful competition and remain high. In the Phase II Decision, the Commission majority noted that the cellular wholesalers held the FCC-granted right to use scarce radio frequencies or spectrum in public trust. The beneficiaries of this trust were the members of the public and not those who by happenstance or design had acquired a position as one of the duopolists.

It is economically efficient and an appropriate spur to system and service expansion for wholesale carriers to keep those profits. However, it is neither efficient nor appropriate for wholesale carriers to earn additional profits due to a failure to compete. As we indicated, such a failure would be demonstrated clearly by the observation that a wholesale carrier's system was operating substantially below the limits of its capacity despite charging prices that more than cover out-of-pocket costs of operation. . . . Similarly, the wholesale carriers in a given market could also reap such failure-to-compete profits by failing to expand their system capacity when such expansion was both feasible and economic with respect to current cellular service rates. In that case, the artificial limitation on